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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-703

ROBERT PHILLIPS and
WILLIAM ARNOLD TOLBERT, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR CERTIORARI

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I.

On June 25, 1975, this Court ruled in *Peltier** that no imperative of judicial integrity required that *Almeida-Sanchez* be applied to other cases still on direct review raising the border-patrol search issue. On June 30, 1975, the Court denied our Petition for Certiorari while granting petitions in, among others: *Hart vs. United States*, 74-

* *United States vs. Peltier*, No. 73-2000, 43 LW 4918.

6014; *Jamney vs. United States,* 74-993; and *United States vs. Speed,* 74-599; and remanding the cases to the Fifth Circuit for reconsideration in the light of the latest border patrol search decisions of this Court.

Those cases involve the same search issue as ours; were tendered to this Court both before and after our Petition was filed; and are based upon factually indistinguishable records.** Simple fairness requires our case to be given the same consideration.

II.

Peltier offers still another test for determining retroactivity—whether the officers believed in good faith that their conduct accorded with the laws. A Petition for Rehearing is an unsturdy vehicle to persuade the Court that such a rule has the folly of requiring an appellate court to decide a controlling issue on the basis of a record in which the issue of good faith was not being litigated. But, even though the good faith issue, framed by this Court, was not in the minds of the parties during trial, our record suggests, (our Petition, pp. 12-13) that the officers were more concerned with contraband than with enforcement of the immigration laws. We should be allowed to make a record on this point, or, at the least, have the newly identified issue considered by the Fifth Circuit.

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Dated: July 23, 1975.

** In *Speed,* for example, as in our case, defendants claimed to have lost the trunk key, and access was obtained by removing the back seat. 497 F 2d 546.

Certificate of Counsel

Counsel for petitioners certifies that this Petition for Rehearing is presented in good faith and not for the purpose of delay and that it is restricted to the grounds set forth in Rule 58 of this Court.

PHILIP A. GILLIS
Attorney for Petitioner